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IN THE

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OCTOBER TERM, 1984

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

v.

RONALD L. COSBY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF ASSOCIATION OF AMERICAN RAILROADS IN SUPPORT OF THE PETITION

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MOTION OF THE ASSOCIATION OF AMERICAN RAILROADS FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

The Association of American Railroads ("AAR") respectfully moves this Court for leave to file the attached Brief *Amicus Curiae*.[1] AAR has been sparing in its previous requests for leave to submit briefs on behalf of the railroad industry, and such requests have always been granted.[2] The Court has generally permitted the participation of industry associations in cases such as this, which

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[1] Petitioner has consented to the filing of the brief. The letter signifying this consent has been filed with the Clerk. Respondents withheld consent.

[2] *See Kassel v. Consolidated Freightways Corp.*, 449 U.S. 897 (1980); *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 885 (1977); *Webb v. Illinois Central Railroad*, 353 U.S. 943 (1957); *Baltimore & Ohio Railway v. Jackson*, 354 U.S. 943 (1957).

involve issues of special concern to the industry as a whole.[3]

AAR is the trade association for the nation's railroads. Its members employ approximately ninety-four percent of the workers, operate approximately ninety-two percent of the trackage, and account for approximately ninety-seven percent of the freight revenues of all railroads in the United States.[4] AAR represents its members before courts, agencies and the U.S. Congress when matters of common concern are at issue.

The subject at issue in this case, mandatory protection pursuant to section 5(2)(f) of the Interstate Commerce Act[5] for railroad employees adversely affected by mergers, consolidations and acquisitions of control, has been an active item on AAR's agenda for nearly fifty years.[6] The decision below, which extended section 5(2)(f) to cover employees of a motor carrier subsidiary acquired in a railroad merger, is completely unprecedented and raises critical problems for AAR's member railroads because of the unanticipated financial burdens it may impose in pending transactions, and the chilling effect it may have on future transactions.

The potential financial impact of the decision is enormous. Approximately half of the nation's Class I railroads[7] have or have previously had motor carrier sub-

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[3] *See, e.g., Western Airlines v. California*, 53 U.S.L.W. 3484 (U.S. Jan. 7, 1985) (motion of Air Transport Association of America for leave to file brief *amicus curiae* granted); *Peick v. Pension Benefit Guaranty Corp.*, —— U.S. ——, 104 S. Ct. 1588 (1984) (American Trucking Associations).

[4] A listing of the membership of the Association appears at Appendix A to the attached brief.

[5] Former 49 U.S.C. § 5(2)(f) (1976), *recodified at* 49 U.S.C. § 11347 (1982).

[6] *See* notes 4-6 of the attached brief and accompanying text.

[7] A Class I railroad is a railroad with annual revenues of $50 million or more. 49 C.F.R. § 1201 (1-1) (1984).

sidiaries employing more than 8,000 workers.[8] Many of these employees have already made broad claims for labor protection based on the decision below. If as few as ten percent were determined to be entitled to labor protection benefits, the railroads' liability could exceed $100 million.[9] If most or all of these motor carrier employees should successfully assert claims to such benefits, the cost to the railroads could exceed $1 billion.

AAR is particularly well-suited to comment on the potential adverse impact of the decision below on the railroad industry.[10] At the moment, AAR is participating as *amicus curiae* in the judicial review of major policy changes by the ICC regarding the ability of railroads to acquire or establish motor carrier subsidiaries.[11] AAR's members are also involved in major ongoing mergers and sales that could be significantly affected by the decision below. AAR respectfully submits that it will be able to assist the Court in resolving this case by providing information the parties cannot provide on what the decision below means in terms of current events and future developments in the railroad industry.

Respectfully submitted,

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[8] *See* Appendix B to the attached brief.

[9] *See* note 9 of the attached brief.

[10] AAR also wishes to point out to the Court that the decision below contradicts the resolution of the same issue in related statutory contexts. *See* section I(B) of the attached brief.

[11] *See American Trucking Associations v. ICC*, Nos. 84-7545 & 84-7546 (9th Cir. filed Feb. 22, 1985).

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMICUS CURIAE	1
SUMMARY OF ARGUMENT	4
I. THE DECISION BELOW IS INCONSISTENT WITH NATIONAL TRANSPORTATION AND LABOR POLICIES	5
A. Mandatory Labor Protection Should Be Construed In Accordance With Its Precise And Limited Purpose	5
B. The Distinction Between Railroad Employees And Employees Of A Railroad's Motor Carrier Subsidiary Is A Necessary Element In A Balanced Statutory Scheme	9
II. THE DECISION BELOW WILL DISRUPT SIGNIFICANT DEVELOPMENTS IN BOTH THE RAIL AND TRUCKING INDUSTRIES IN THE ERA OF DEREGULATION	12
A. Elimination Of Barriers To Railroad Acquisition Of Motor Carriers	13
B. Pending Railroad Mergers And Sales	15
C. Deregulation And Competition In The Motor Carrier Industry	18
CONCLUSION	20
APPENDIX A: MEMBERS OF THE ASSOCIATION OF AMERICAN RAILROADS	1a
APPENDIX B: RAILROADS AND MOTOR CARRIER SUBSIDIARIES	9a

TABLE OF AUTHORITIES

CASES — Page

Acquisition of Motor Carriers by Railroads, —— I.C.C. 2d —— (July 20, 1984), *appeal pending sub nom. American Trucking Associations v. ICC*, Nos. 84-7545, 84-7546 (9th Cir. filed Aug. 20, 1984) 13, 14

Applications for Motor Carrier Operating Authority By Railroads & Rail Affiliates, 132 M.C.C. 978 (1982), *aff'd sub nom. American Trucking Associations v. ICC*, 722 F.2d 1243 (5th Cir.), *cert. denied*, 105 S. Ct. 324 (1984) 13, 14

Brotherhood of Maintenance of Way Employees v. United States, 366 U.S. 169 (1961) 20

Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad, 353 U.S. 30 (1957) 12

Brotherhood of Railway & Steamship Clerks v. Florida East Coast Railway, 384 U.S. 238 (1966) 12

Chemical Manufacturers Association v. Natural Resources Defense Council, 53 U.S.L.W. 4193 (U.S. Feb. 27, 1985) 8

Chicago, Milwaukee, St. Paul & Pacific Railroad Co.—Reorganization-Acquisition by Grand Trunk Corp., Finance Docket No. 28640 (Sub-No. 9) (I.C.C. filed Aug. 5, 1982) 16

CSX Corp.-Control-American Commercial Lines, Inc., Finance Docket No. 30300 (decided Aug. 27, 1984; served Sept. 7, 1984), *appeal pending sub nom. Crouse Corp. v. ICC*, Nos. 84-3743, 84-3753 (6th Cir. filed Sept. 10, 1984) 14

ICC v. Railway Labor Executives Association, 315 U.S. 373 (1942) 20

In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co., No. 77B8999, Order No. 809 (N.D. Ill. Feb. 19, 1985) 16

In re Penn Central Transportation Co., 384 F. Supp. 895 (Regional Rail Reorg. Ct. 1974) 18

Missouri Pacific Truck Lines v. United States, 3 Cl.Ct. 14 (1983), *aff'd*, 736 F.2d 706 (Fed. Cir. 1984) 10

TABLE OF AUTHORITIES—Continued

	Page
New York Central Transport Co. v. Schwartz, NLRB Dec. (CCH) ¶ 11,653 (1962)	10
New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60, *aff'd sub nom. New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979)	3
New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979)	2
Norfolk & Western Railroad v. Nemitz, 404 U.S. 37 (1971)	20
Norfolk Southern Corp.-Control-North American Van Lines, Finance Docket No. 30500 (I.C.C. filed Aug. 16, 1984)	13
Oregon Short Line Railroad—Abandonment, 354 I.C.C. 584 (1978)	2
Railway Labor Executives Association v. United States, 339 U.S. 142 (1950)	20
Railway Labor Executives Association v. United States, 675 F.2d 1248 (D.C. Cir. 1982)	2
Santa Fe Southern Pacific Corp.—Control-Southern Pacific Transportation Co., Finance Docket No. 30400 (I.C.C. served November 30, 1984)	16
Truck Drivers, Chauffeurs & Helpers Local Union No. 100, 5 N.M.B. 298 (1975)	10
United States v. Lowden, 308 U.S. 225 (1939)	6

STATUTES AND REGULATIONS

26 U.S.C. §§ 3101-3126 (1982)	9
26 U.S.C. §§ 3201-3233 (1982)	9
26 U.S.C. §§ 3301-3311 (1982)	9
29 U.S.C. §§ 151-169 (1982)	9
45 U.S.C. §§ 151-188 (1982)	9
45 U.S.C. § 153(i) (1982)	12
45 U.S.C. § 153(m) (1982)	12
45 U.S.C. § 156 (1982)	12
45 U.S.C. § 160 (1982)	12
45 U.S.C. §§ 351-367 (1982)	9
45 U.S.C. § 902(4)(A) (1982)	16
49 U.S.C. § 11344(b)(1) (1982)	11

TABLE OF AUTHORITIES—Continued

	Page
49 U.S.C. § 5(2)(f) (1976)	*passim*
49 U.S.C. § 11347 (1982)	2, 10
Railway Labor Act, Pub. L. No. 73-442, § 1, 48 Stat. 1185 (1934)	10
Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898	5
Railway Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31	18
Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101, 93 Stat. 736 (1979)	16
Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793	18
Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895	18
49 C.F.R. § 1201(1-1) (1984)	3
CONGRESSIONAL MATERIALS	
Oversight of the Motor Carrier Act of 1980: Hearing Before the Senate Committee on Commerce, Science, & Transportation, 98th Cong., 2d Sess. (1984)	18, 19
Oversight of the Motor Carrier Act of 1980: Hearing Before the Senate Committee on Commerce, Science, & Transportation, 98th Cong., 1st Sess. (1983)	8
Motor Carrier Reform Act of 1980: Oversight Hearings Before the Senate Committee on Commerce, Science, & Transportation, 97th Cong., 1st Sess. (1981)	3
Oversight of the Motor Carrier Act of 1980: Hearings Before the House Subcommittee on Surface Transportation of the Committee on Public Works & Transportation, 97th Cong., 1st Sess. (1981)	19
Omnibus Transportation Bill: Hearings Before the House Committee on Interstate & Foreign Commerce, 76th Cong., 1st Sess. (1939)	2, 6, 7, 8
Transportation Act of 1939: Hearings Before the Senate Committee on Interstate Commerce, 76th Cong., 1st Sess. (1939)	7, 8

TABLE OF AUTHORITIES—Continued

	Page
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To Amend the Railway Labor Act: Hearings Before the Senate Committee on Interstate Commerce, 73rd Cong., 2d Sess. (1934)	10
S.638, 99th Cong., 1st Sess., 131 Cong. Rec. S2727 (March 7, 1985)	17
H.R. 1449, 99th Cong., 1st Sess., 131 Cong. Rec. H1100 (March 6, 1985)	17
126 Cong. Rec. H5407-10 (June 19, 1980)	8
86 Cong. Rec. 10,189 (1940)	6, 7
86 Cong. Rec. 5881 (1940)	7, 8
86 Cong. Rec. 5871 (1940)	7
86 Cong. Rec. 5864 (1940)	7
84 Cong. Rec. 9877 (1939)	6
84 Cong. Rec. pt. 14, 3947 (1939)	6
80 Cong. Rec. 7766 (1936)	7

BOOKS & PERIODICALS

Adam & McKenna, *Railroad Retirement Taxes vs. Social Security Taxes: Railroad Affiliates and Intermodal Operations*, in *Railroad Tax Workshop* (R. Molloy ed. 1981)	11
S. Breyer, *Regulation and Its Reform* (1982)	8
Davis, Sherwood & Jones, *An Estimate of Labor Protection Cost in Selected Railway Consolidations*, 43 I.C.C. Prac. J. 56 (1975)	17
J.R. Foster, *Boundaries Between Competition and Economic Regulation* (1983)	8
Johnson, *Going, Going, Gone!—The I.C.C.'s Regulation of Trucking Mergers*, 51 I.C.C. Prac. J. 391 (1984)	19
Miller & Lindsay, *Mergers and Acquisitions: Labor Relations Considerations*, 9 Empl. Rel. Law J. 427 (1983-84)	5
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TABLE OF AUTHORITIES—Continued

Page

Ris, *Government Protection of Transportation Employees: Sound Policy or Costly Precedent?*, 44 J. Air L. & Com. 509 (1979) 5, 6

I.L. Sharfman, *The Interstate Commerce Commission* (1931) 6

R. Stevens, *Statutory History of the United States: Income Security* (1970) 11

L. Troy, *Trade Union Membership: 1837-1962* (1965) 7

MISCELLANEOUS

Labor Relations Expediter (CCH) (1984) 5

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BRIEF *AMICUS CURIAE* OF ASSOCIATION OF AMERICAN RAILROADS IN SUPPORT OF THE PETITION

INTEREST OF THE *AMICUS CURIAE* [1]

As the trade association for the nation's railroads, the Association of American Railroads ("AAR")[2] has a vital and ongoing interest in the interpretation of federal leg-

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[1] Petitioner has consented to the filing of this brief, pursuant to Rule 36 of the Supreme Court rules. Respondents withheld consent. A motion for leave to file this brief therefore accompanies the brief.

[2] AAR is a voluntary, unincorporated, nonprofit association of railroads operating in the United States, Canada and Mexico. Its member railroads employ approximately ninety-four percent of the workers, operate approximately ninety-two percent of the trackage, and account for approximately ninety-seven percent of the freight revenues of all railroads in the United States. A listing of the membership of the Association is attached as Appendix A to this brief. The Association represents its member railroads before courts, the U.S. Congress, government agencies and administrative tribunals when matters of common concern are at issue.

islation affecting the railroad industry. The provision of the Interstate Commerce Act that mandates arrangements for the protection of railroad employees adversely affected by mergers, consolidations and acquisitions of control, section 5(2)(f),[3] has long been a matter of particular concern to AAR and its members. AAR was involved in the labor protection area even prior to the enactment of section 5(2)(f),[4] participated in the legislative process leading up to its enactment,[5] and has participated in several of the principal proceedings construing the statute.[6]

In the decision below, the Eighth Circuit departed radically from the settled interpretation of section 5(2)(f) by holding that a railroad company was required to provide labor protection benefits to employees of a motor carrier subsidiary acquired in connection with a railroad merger. This unprecedented extension of mandatory labor protection poses critical problems for AAR's member railroads because of the unanticipated financial burdens that it portends and because of its potential adverse impact on pending and future transactions that will determine the structure of the evolving surface transportation industry.

The potential financial impact of the Eighth Circuit's decision is enormous. Approximately half of the nation's

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[3] Formerly 49 U.S.C. § 5(2)(f) (1976). The provision was recodified at 49 U.S.C. § 11347 in 1978. AAR will follow the practice of petitioner and refer to this provision by its prior designation.

[4] *See* Letter of President Franklin D. Roosevelt to J.J. Pelley (AAR) and J.A. Phillips (Association of Railway Labor Executives) (March 6, 1936), *reprinted in Omnibus Transportation Bill: Hearings Before the House Committee on Interstate & Foreign Commerce*, 76th Cong., 1st Sess. 1721 (1939) (hereinafter *"House Hearings"*) (suggesting the negotiations that led to the Washington Job Protection Agreement of 1936; *see* p. 7, *infra*).

[5] *See House Hearings* at 258, 1499 (statements of Mr. R.V. Fletcher, General Counsel of AAR, and Mr. Kerr).

[6] *See, e.g., Railway Labor Executives Association v. United States*, 675 F.2d 1248 (D.C. Cir. 1982); *New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979); *Oregon Short Line Railroad—Abandonment*, 354 I.C.C. 584 (1978).

Class I railroads[7] either currently have motor carrier subsidiaries or affiliates, have recently sold or discontinued operations of such subsidiaries, or are currently seeking Interstate Commerce Commission (ICC) approval of the acquisition of such subsidiaries.[8] These motor carriers employ more than 8,000 workers and had 1984 revenues of approximately $800 million. If as few as ten percent of these 8,000 motor carrier employees were determined to be entitled to labor protection benefits, the railroads' liability could exceed $100 million.[9] If most or all of these motor carrier employees should successfully assert claims to such benefits, the cost to the railroads could exceed $1 billion.

The railroads with motor carrier interests who were parties to past mergers and those whose proposed mergers are currently pending before the ICC for approval could not have anticipated the decision below or its potential impact. Of equal importance, the risk of additional labor protection liability as a result of that decision could inhibit railroads from undertaking future mergers or acquisitions that would otherwise be justified on the grounds of operating efficiencies or cost savings. This risk is particularly acute because motor carrier employees and their union representatives have already manifested an intention in pending ICC proceedings to seek broad application of the decision below. *See* section II, *infra*. Because

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[7] A Class I railroad is a railroad with annual revenues of $50 million or more. 49 C.F.R. § 1201 (1-1) (1984).

[8] A list of these railroad companies and subsidiaries is attached as Appendix B to this brief.

[9] This estimate is based on testimony before Congress that a Teamster truck driver earned approximately $30,000 per year in 1981. *See Motor Carrier Reform Act of 1980: Oversight Hearings Before the Senate Committee on Commerce, Science, & Transportation*, 97th Cong., 1st Sess. 80 (1981). The estimate assumes application of the *New York Dock* requirement of full compensation for a period of six years following termination of employment. *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, 76, *aff'd sub nom. New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979).

that decision has already cast a cloud on merger proposals and could have an unpredictable and disruptive effect on the railroad industry for years into the future, AAR strongly supports the petition for a writ of certiorari.

SUMMARY OF ARGUMENT

The mandatory protection of railroad labor in merger cases under section 5(2)(f) is an extraordinary form of income security found virtually nowhere else in the United States. This phenomenon developed under historical and legislative circumstances unique to railroad labor and was designed for narrowly defined purposes. Specifically, statutory labor protection arose in the context of efforts to promote railroad consolidation during the Depression without exacerbating already severe unemployment in the industry. The Eighth Circuit contorted section 5(2)(f) to bring within its scope employees never previously entitled to such protection.

Not only is the decision below at odds with the plain language of the Interstate Commerce Act and its history, it also conflicts with well-settled distinctions between employees of a railroad and employees of its motor carrier subsidiary for purposes of related legislation, such as labor relations and taxation statutes. The decision is contrary to and may undermine important national transportation and labor policy goals.

The adverse impact of the Eighth Circuit's decision will be particularly severe because it comes at a time of major developments in the increasingly deregulated railroad and trucking industries. In the short time since the decision below was announced, motor carrier employees have asserted broad claims for entitlement to labor protection based on the decision. Imposition of unwarranted adidtional costs on the railroad industry at this time could undermine congressional and industry efforts to restore the nation's railroads to a condition of financial soundness, and hamper the railroad industry's ability to compete effectively with other modes of transportation.

I. THE DECISION BELOW IS INCONSISTENT WITH NATIONAL TRANSPORTATION AND LABOR POLICIES

A. Mandatory Labor Protection Should Be Construed In Accordance With Its Precise And Limited Purpose

In virtually no sector of the economy other than the railroad industry are employers required, by federal statute, to compensate their employees for any adverse financial impact they may suffer as a result of economy or efficiency measures flowing from a merger, consolidation or other acquisition.[10] An acquiring company as a general matter has no legal obligation towards the employees of its predecessor.[11] Indeed, insulation of employees from adverse financial effects could negate some of the very benefits sought to be achieved by mergers, that is, efficiency improvements or cost reductions, and would therefore be counterproductive and paradoxical as economic policy.[12] Congress' decision to impose this unusual obligation on railroad companies through section 5(2)(f) was the outgrowth of pervasive federal regulation of the railroads and specific economic conditions unique to the railroad industry.

When it enacted the labor protection provision as part of the Transportation Act of 1940,[13] Congress was aware

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[10] *See* Ris, *Government Protection of Transportation Employees: Sound Policy or Costly Precedent?*, 44 J. Air L. & Com. 509 (1979); *see also* Miller & Lindsay, *Mergers and Acquisitions: Labor Relations Considerations*, 9 Empl. Rel. Law J. 427, 429 (1983-84).

[11] *See* Miller & Lindsay, *supra* note 10, at 429. Employers and employees can voluntarily create such obligations, however, through collective bargaining agreements. Roughly half the collective bargaining agreements in the country do provide some sort of income maintenance provisions, such as severance pay and supplemental unemployment benefits. *See* Labor Relations Expediter (CCH) 128 (1984).

[12] *See* Ris, *supra* note 10, at 537-40.

[13] Pub. L. No. 76-785, 54 Stat. 898 (codified in sections of 49 U.S.C. (1982)).

that it was providing railroad employees with special protection enjoyed by no workers in any other industry.[14] Such protection was needed to facilitate the passage of railroad merger legislation, which was viewed as essential to the survival of the railroad industry. The protection was intended, however, to cover only the distinct, identifiable group of workers who were employed in traditional railroad operations.

The years following World War I were a period of crisis and uncertainty for the railroad industry. The federal government's experience in supervising railroad operations during the war had confirmed that the nation's railroad system suffered from great waste and duplication of facilities.[15] Consolidation into stronger, but fewer railroads became a principal goal of national transportation policy.[16] Such consolidation, however, could also result in reductions in railroad employment, which, Congress believed, would exacerbate the already severe unemployment that the railroad industry had experienced during the Depression.[17]

Unemployed railroad workers, moreover, faced special difficulties in seeking re-employment. Railroad employees were trained for the special tasks required in railroad operations, and therefore had developed skills that were not in demand elsewhere in the economy.[18] If the number of jobs in the industry decreased because of consoli-

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[14] *See* 86 Cong. Rec. 10,189 (1940) (remarks of Rep. Wolverton).

[15] *See* Ris, *supra* note 10, at 512; 1 I.L. Sharfman, *The Interstate Commerce Commission* 172 (1931).

[16] *See United States v. Lowden*, 308 U.S. 225, 232 (1939); Sharfman, *supra* note 16, at 172-73.

[17] *See* 84 Cong. Rec. 9877 (1939) (remarks of Rep. Pierce); *House Hearings* at 213 (remarks of Mr. Harrison); at 1291 (remarks of Mr. McGrath); at 19[illegible] (remarks of Rep. Youngdahl and Mr. Gray).

[18] *See House Hearings* at 213-16 (remarks of Mr. Harrison); at 1291, 1295 (remarks of Mr. McGrath); 84 Cong. Rec. pt. 14, 3947 (1939) (extension of remarks of Sen. Truman).

dations, railroad employees could face severe long-term unemployment.

Congress sought to resolve this dilemma by adopting the central provisions of a voluntary agreement reached by railroad labor and management a few years earlier—the Washington Job Protection Agreement of 1936.[19] This unprecedented agreement, which dealt with the problem of adverse effects on employees involved in railroad mergers and consolidations, had been hailed as a remarkable achievement in addressing the "great and serious difficulties" then facing the industry.[20] The signatory labor representatives included the principal railroad crafts, but did not include the Teamsters or any representative of motor carrier employees.[21] Congress used this agreement as the model for statutory labor protection, in order to make its terms applicable to the remaining *railroads* that had not signed the agreement.[22] There is no indication Congress intended to extend its benefits to groups of workers other than those covered by the Washington Job Protection Agreement.

The legislative history confirms that Congress was concerned only about the welfare of those workers who were traditionally considered to be railroad employees, and not employees involved in motor and water transportation.[23]

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[19] A copy of the Agreement appears in *House Hearings* at 231-37.

[20] *See* 80 Cong. Rec. 7766 (1936) (remarks of Sen. Crosser).

[21] Agreement of May 1936, Washington, D.C., *House Hearings* at 237. The Teamsters Union had been in existence since 1903, and by 1935 had over 160,000 members. *See* L. Troy, *Trade Union Membership: 1837-1962* A-9 (1965).

[22] *See* 86 Cong. Rec. 10,189 (1940) (remarks of Rep. Wolverton); 86 Cong. Rec. 5864 (1940) (remarks of Rep. Lea); *House Hearings* at 216, 244 (remarks of Mr. Harrison).

[23] *See* 86 Cong. Rec. 5871 (1940) (remarks of Rep. Harrington); 86 Cong. Rec. 5881 (1940) (remarks of Rep. Wolverton); *Transportation Act of 1939: Hearings Before the Senate Committee on Interstate Commerce*, 76th Cong., 1st Sess. (1939) (hereinafter "*Senate Hearings*") at 24-25 (remarks of Mr. Harrison).

Commissioner Eastman, ICC Commissioner and former Federal Coordinator of Transportation, testified that no motor carrier employees had asked for labor protection and there was no evidence that such protection was needed.[24] Several Congressmen and witnesses observed, in fact, that a significant cause of the loss of jobs in the railroad industry was the existence of truck competition.[25] Moreover, one of the adverse effects of railroad unemployment was identified as severe strain on the Railroad Retirement fund, to which motor carrier employees did not contribute.[26]

The Eighth Circuit's ruling, therefore, not only ignores the plain language and structure of the Interstate Commerce Act, as petitioner demonstrated, but also contravenes the intent of Congress as indicated by the legislative history.[27] The courts should not permit, let alone initiate, a reinterpretation of a regulatory statute such as section 5(2)(f) that ignores its origins and purposes.[28]

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[24] *Senate Hearings* at 793 (remarks of Commissioner Eastman).

[25] 86 Cong. Rec. 5881 (1940) (remarks of Rep. Wolverton); *Senate Hearings* at 25 (remarks of Mr. Harrison).

[26] *House Hearings* at 216 (remarks of Mr. Harrison); *see also* section B, *infra*.

[27] Moreover, motor carrier employees have had ample opportunity to seek legislative parity with railroad employees and have not succeeded in gaining appreciable additional labor protection. For example, the Motor Carrier Act of 1980 established a job reference service in the Department of Labor, but an attempt by the Teamsters to create a federally-financed labor protection scheme providing benefits analogous to railroad labor protection was rejected. *See* 126 Cong. Rec. H5407-10 (June 19, 1980). Requests for additional labor protection have also been made during the Motor Carrier Act oversight hearings, but none of these requests has been seriously pursued by Congress. *See Oversight of the Motor Carrier Act of 1980: Hearing before the Senate Committee on Commerce, Science, & Transportation*, 98th Cong., 1st Sess. 50-52 (1983).

[28] *See Chemical Manufacturers Association v. Natural Resources Defense Council*, 53 U.S.L.W. 4193 (U.S. Feb. 27, 1985); *see generally* J.R. Foster, *Boundaries Between Competition and Economic Regulation* 17 (1983); S. Breyer, *Regulation and Its Reform* 191 (1982).

B. The Distinction Between Railroad Employees And Employees Of A Railroad's Motor Carrier Subsidiary Is A Necessary Element In A Balanced Statutory Scheme

The Eighth Circuit's holding that the employees of a motor carrier subsidiary may obtain the unique labor protection guarantees extended to railroad employees by § 5(2)(f) is inconsistent with the distinction drawn between railroad employees and motor carrier employees in related statutory contexts. In the areas of labor relations and payroll taxation for retirement and unemployment, Congress has consistently singled out railroad employees for unique statutory treatment. Thus, railroad employees are covered by the Railway Labor Act,[29] whereas motor carrier employees, like other workers, fall under the National Labor Relations Act.[30] The Railroad Retirement Tax Act[31] and the Railroad Unemployment Insurance Act[32] govern payroll taxes for railroad employees, whereas motor carriers, like other companies, are simply covered by the Federal Insurance Contributions Act[33] and the Federal Unemployment Tax Act.[34] These rail and non-rail statutes are mutually exclusive, and result in a distinct mix of benefits and burdens for railroad employees not applicable to any other employees.

Significantly, in each of these areas it has been established that a motor carrier subsidiary of a railroad must be treated as a motor carrier, not as a railroad. For example, the employees of a motor carrier subsidiary that operates closely with its parent railroad in "piggy-back" operations and pickup and delivery service are nonetheless motor carrier employees subject to the National La-

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[29] 45 U.S.C. §§ 151-188 (1982).

[30] 29 U.S.C. §§ 151-169 (1982).

[31] 26 U.S.C. §§ 3201-3233 (1982).

[32] 45 U.S.C. §§ 351-367 (1982).

[33] 26 U.S.C. §§ 3101-3126 (1982).

[34] 26 U.S.C. §§ 3301-3311 (1982).

bor Relations Act, and not railway employees.[35] Amendments to the Railway Labor Act proposed in 1934 would have broadened the scope of the Act to include all "operations which form an integral part of railroad transportation." [36] After hearing testimony raising concern about the effect of such a provision on motor carrier subsidiaries,[37] Congress enacted revised language providing that the Act would not apply to "trucking service" performed by subsidiaries.[38]

Interpreting similar language in the Railroad Retirement Tax Act, the Claims Court has made clear that a railroad's motor carrier subsidiary is not a railroad employer for purposes of the railroad tax acts. *Missouri Pacific Truck Lines v. United States*, 3 Cl.Ct. 14 (1983), *aff'd*, 736 F.2d 706 (Fed. Cir. 1984) (per curiam). In the course of an exhaustive review of the statutory landscape, including consideration of non-tax railroad and motor carrier legislation, the Claims Court held that the existence of extensive motor carrier intermodal and substitute-for-rail operations did not alter the reality that the motor carrier provided trucking service and was not a railroad employer. *See* 3 Cl.Ct. at 17-18, 21, 27.

In the same fashion, the Interstate Commerce Act distinguishes between the labor protection guaranteed to railroad employees [39] and the labor protection available, as a

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[35] *See Truck Drivers, Chauffeurs & Helpers Local Union No. 100*, 5 N.M.B. 298 (1975); *New York Central Transport Co. v. Schwartz*, NLRB Dec. (CCH) ¶ 11,653 (1962).

[36] *See To Amend The Railway Labor Act: Hearings Before the Senate Committee on Interstate Commerce*, 73rd Cong., 2d Sess. 10 (1934) (remarks of Commissioner Eastman).

[37] *See id.* at 56-59 (remarks of Mr. Clement); *Railway Labor Act Amendments: Hearings Before the House Committee on Interstate & Foreign Commerce*, 73rd Cong., 2d Sess. 19, 124 (1934) (remarks of Commissioner Eastman and Mr. Clement).

[38] *See* Railway Labor Act, Pub. L. No. 73-442, § 1, 48 Stat. 1185, 1186 (1934).

[39] Former section 5(2)(f), *codified at* 49 U.S.C. § 11347 (1982).

matter of the ICC's discretion, to employees of other companies, including motor and water carriers.[40] Consistent with the law that has developed under the related labor and tax statutes, the ICC has long held that individual workers do not become railroad employees entitled to mandatory protection simply because their employer is owned by a railroad or coordinates its services with railroad operations. *See* Petition for Certiorari at 11-13. The decision below not only reverses the Commission's longstanding interpretation of the Interstate Commerce Act but also upsets the logic and fairness of the congressional scheme by providing mandatory six-year labor protection to a group of employees who are not otherwise subject to the web of railway legislation.

As noted above, the tax and labor statutes provide railroad employees with a distinct mix of burdens and benefits. For example, by participating in the railroad retirement system, railroad employees bear significantly higher taxes than those imposed on motor carrier employees through the social security system.[41] Railroad employees also face important limitations on the full exercise of their rights in the labor relations area—most notably the right to strike. Because of the perceived national interest in preventing any interruption in rail service, railway employees are completely precluded from

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[40] Former section 5(2)(c), *codified at* 49 U.S.C. § 11344(b)(1) (1982).

[41] *See* Adam & McKenna, *Railroad Retirement Taxes v. Social Security Taxes: Railroad Affiliates and Intermodal Operations*, in *Railroad Tax Workshop* 141, 144-47 (R. Molloy ed. 1981).

It is also noteworthy that at approximately the same time Congress was formulating section 5(2)(f), it was also strengthening the federal role in unemployment compensation through amendments to the Social Security Act. *See* R. Stevens, *Statutory History of the United States: Income Security* 185, 230-32, 246, 251-52 (1970). To use the jargon of a later era, Congress provided a "safety net" for employees, such as motor carrier employees, who were not included in a special system such as the railroad retirement system.

striking over certain kinds of disputes,[42] and may only strike in other disputes after exhaustion of elaborate mediation and intervention procedures involving special administrative bodies established for this purpose.[43] The National Labor Relations Act imposes no such restrictions on motor carrier employees.

Through the entire body of legislation concerning railroad employees, Congress sought to achieve a balance between the interests of railroads, their employees and the general public—a balance that was different from that struck for other workers in the economy. The Eighth Circuit's decision purports to carve out a specific benefit—mandatory labor protection—without regard to the remainder of the federal railway labor scheme. It thereby contradicts the resolution of the same issue in related statutory contexts and introduces an element of imbalance and unfairness that will surely engender unnecessary litigation and controversy.

II. THE DECISION BELOW WILL DISRUPT SIGNIFICANT DEVELOPMENTS IN BOTH THE RAIL AND TRUCKING INDUSTRIES IN THE ERA OF DEREGULATION

The decision below threatens to have a disruptive and adverse financial impact on the railroad industry in several ways. Two-thirds of the railroad companies with ownership interest in or affiliation with motor carriers are the product of mergers. The ICC studied and approved each of those mergers, as it did in the case of the BN-Frisco merger underlying the present dispute, and imposed mandatory protection of railroad employees as a condition of its approval of each merger. The decision below is likely to create new claims, like the ones

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[42] 45 U.S.C. §§ 153(i) & (m) (1982). *See Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad*, 353 U.S. 30, 35-37 (1957).

[43] 45 U.S.C. §§ 156, 160 (1982). *See Brotherhood of Railway & Steamship Clerks v. Florida East Coast Railway*, 384 U.S. 238, 243-44 (1966).

raised by the Respondents, that may require additional proceedings to interpret the scope of the original orders.

The adverse impact of the decision below is particularly pronounced because it comes at a time of accelerating changes in the structure of the nation's surface transportation industries. These changes are reflected by: (1) the ICC's recent elimination of barriers to railroad acquisition of motor carriers and other non-rail transportation companies; (2) the current wave of major railroad consolidations; and (3) the increasing competitiveness of and ease of entry into the motor carrier industry.

A. Elimination Of Barriers To Railroad Acquisition Of Motor Carriers

In the aftermath of the recent railroad and motor carrier deregulation statutes, the ICC has made major policy changes that make it easier for railroads to acquire or establish motor carrier subsidiaries.[44] Under this new regime, railroad companies are actively seeking opportunities for ownership of companies in other transportation modes, in order to provide shippers with a full range of transportation services. The decision below may well frustrate these efforts by imposing a new economic burden on such transactions.

For example, the Norfolk Southern Corporation is currently seeking ICC authorization to acquire North American Van Lines ("NAVL").[45] The decision below has significantly complicated that proceeding by creating a new issue—whether the NAVL employees are entitled to

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[44] *See Acquisition of Motor Carriers by Railroads*, —— I.C.C.2d —— (July 20, 1984), *appeal pending sub nom. American Trucking Associations v. ICC*, Nos. 84-7545, 84-7546 (9th Cir. filed Aug. 20, 1984); *Applications for Motor Carrier Operating Authority By Railroads & Rail Affiliates*, 132 M.C.C. 978 (1982), *aff'd sub nom. American Trucking Associations v. ICC*, 722 F.2d 1243 (5th Cir.), *cert. denied*, 105 S. Ct. 324 (1984).

[45] *Norfolk Southern Corp.-Control-North American Van Lines*, Finance Docket No. 30500 (I.C.C. filed Aug. 16, 1984).

mandatory labor protection under section 5(2)(f). The Teamster filings in that case indicate the motor carrier employees are basing their claim for such protection entirely on a broad reading of the Eighth Circuit's decision.[46] Extension of mandatory labor protection to NAVL's 2,000 employees in connection with the acquisition would be extremely burdensome.[47]

The Commission's previous restrictions on railroad acquisition of motor carriers were criticized as having a "chilling effect" on the development of innovative and efficient transportation services.[48] Relaxing those barriers, the Commission observed, would benefit the shipping public by allowing free market forces to determine the allocation of rail and motor carrier services.[49] The ICC's new policy of eliminating restraints on railroad ownership of motor carriers could well be frustrated, how-

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[46] *See* Opening Brief of the Regular Common Carrier Conference and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in Opposition to Application at 56-59 (January 17, 1985). In particular, the Teamsters rely heavily on the Eighth Circuit's analysis of the effect of the 1978 recodification of the Interstate Commerce Act on the meaning of the term "employee" in section 5(2)(f). That analysis, however, was plain legal error. *See* Petition for Writ of Certiorari at 11 n.18.

[47] In contrast, in a case decided just as the decision below was announced, the Interstate Commerce Commission approved the acquisition of a major water carrier by a railroad holding company, but denied labor protection for the water carrier's employees. As in the *NAVL* case, the economic costs of any additional labor protection for non-rail employees could have affected the economics of the entire transaction, since the water carrier involved has some 2,500 employees. *CSX Corp.-Control-American Commercial Lines, Inc.*, Finance Docket No. 30300, slip op. at 63 (decided Aug. 27, 1984; served Sept. 7, 1984), *appeal pending sub nom. Crouse Corp. v. ICC*, Nos. 84-3743, 84-3753 (6th Cir. filed Sept. 10, 1984).

[48] *See American Trucking Associations*, 722 F.2d at 1251.

[49] "The ability of a transportation company to provide the consumer with [a] broad range of choices is certainly consistent with the aim of the Interstate Commerce Act to ensure that the best possible surface transportation system is provided to the public." *Acquisition of Motor Carriers by Railroads*, slip op. at 15.

ever, if the chilling effect of the old restrictions is replaced by new, equally burdensome financial liabilities in the form of mandatory income guarantees.

B. Pending Railroad Mergers And Sales

Since the 1940's the nation has experienced several waves of railroad consolidations, as the industry attempted to restructure itself to meet the needs of a changing marketplace. After a lull in merger activity following the Penn Central bankruptcy in 1970, the railroads are once again turning toward consolidation as a means of positioning themselves to compete with other modes of transportation in a deregulatory environment. Indeed, the first significant transaction in the most recent wave of consolidations was the BN-Frisco merger that gave rise to this case.[50] The industry assessment of the economic benefits of mergers will necessarily be influenced by the Eighth Circuit's unwarranted extension of mandatory labor protection to motor carrier subsidiaries. The potentially disruptive effect of the decision below is exemplified in two prominent, ongoing matters—the proposed merger of the Santa Fe and Southern Pacific railroads, and the proposed sale of Conrail to the Norfolk Southern Corporation.

The proposed Santa Fe-Southern Pacific merger is presently pending before the ICC.[51] Both Santa Fe and Southern Pacific either currently own or have recently sold motor carrier subsidiaries. Indeed, these subsidiaries are among the largest rail-controlled motor carriers in terms of numbers of persons employed. The Teamsters have already made sweeping claims on behalf of the

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[50] Other recent consolidations include the Union Pacific-Missouri Pacific-Western Pacific merger, the formation of a unified northeastern railroad system by the Guilford Transportation Company, and mergers undertaken by the CSX and Norfolk Southern Corporations.

[51] *Santa Fe Southern Pacific Corp.-Control-Southern Pacific Transportation Co.*, Finance Docket No. 30400 (I.C.C. filed Nov. 22, 1983).

motor carrier employees in that proceeding, and assert that the decision below extends not only to motor carrier subsidiaries, but to other non-rail subsidiaries as well.[52] While the ICC has not yet ruled on the merits of the Teamsters claim, it noted in a preliminary order that the Eighth Circuit had interpreted section 5(2)(f) to have "broad application" which could extend to the employees of the railroads' motor carrier subsidiaries.[53] In view of the size of the motor carriers involved and the number of employees potentially affected, the imposition of *New York Dock* conditions would be a significant burden on the merging railroads.

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[52] *See* Transcript of Hearing at 9720-26 (Jan. 29, 1985). This interpretation evidently stems from the Eighth Circuit's observation that the FTC operations were "intimately tied to the railroad's main transportation function." *Cosby v. ICC*, 741 F.2d 1077, 1081 (8th Cir. 1984).

Another group of motor carrier employees also fastened on the "intimately tied" language, in order to raise labor protection claims in the ongoing Milwaukee Road reorganization. *Chicago, Milwaukee, St. Paul & Pacific Railroad Co.-Reorganization-Acquisition by Grand Trunk Corp.*, Finance Docket No. 28640 (Sub-No. 9) (I.C.C. filed Aug. 5, 1982). On November 21, 1984, seventy employees of the Milwaukee motor carrier subsidiary intervened in the proceeding seeking mandatory labor protective conditions. *See* Position Paper of Seventy (70) Individual Employees of Milwaukee Motor Transportation Company Seeking Employee Protective Conditions, Finance Docket No. 28640 (Sub-No. 9). The Commission rejected the MMT employees' claims. *See* —— I.C.C. 2d ——, slip op. at 16-17 (served Jan. 11, 1985). On appeal, the Reorganization Court avoided the *Cosby* problem by deciding that motor carrier employees are not railroad employees for purposes of the Milwaukee Railroad Restructuring Act, Pub. L. No. 96-101, 93 Stat. 736 (1979), which defines employees as those who worked "on a line of . . . railroad." 45 U.S.C. § 902(4)(A) (1982). *In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, No. 77B8999, Order No. 809 at 8 (N.D. Ill. Feb. 19, 1985). This narrow ruling, of course, will not deter continued claims under the Interstate Commerce Act.

[53] *Santa Fe Southern Pacific Corp.-Control-Southern Pacific Transportation Co.*, Finance Docket No. 30400 (I.C.C. served November 30, 1984).

In the case of Conrail, the decision below introduces a further complication into a proposed sale recommended by the Department of Transportation as an ultimate solution to the decades-old railroad crisis in the Northeast.[54] The Conrail program has consumed massive federal funds, and its transfer back to the private sector will perhaps be the largest government divestiture of a business operation in this century. Conrail's motor carrier subsidiary, Pennsylvania Truck Lines, is the second largest rail-controlled motor carrier in the nation, with some 1,000 employees.[55] Norfolk Southern, the potential purchaser, has offered standard labor protection to Conrail's rail employees, and the bill transmitted to Congress by the DOT to provide for the transfer of ownership requires *New York Dock* protection for employees of Conrail or its rail affiliates.[56] Before the decision below, there was no basis even to suggest that the employees of Pennsylvania Truck Lines were entitled to *New York Dock* conditions. After the Eighth Circuit's decision, however, these employees are in a position to make claims that could enormously complicate the legislative process required to accomplish the proposed sale.

Mandatory labor protection imposed in merger proceedings has been recognized as a substantial and burdensome cost to railroads.[57] Judge Friendly, writing for the Special Court overseeing reorganization of the Penn Central railroad, noted that "[i]t is common knowledge

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[54] Conrail was created by Congress in 1973, as a means of preserving rail service in the Northeast in the wake of the Penn Central bankruptcy. *See* Perritt, *Ask and Ye Shall Receive: The Legislative Response to the Northeast Rail Crisis*, 28 Vill. L. Rev. 271, 297-301 (1983).

[55] *See* Appendix B.

[56] *See* H.R. 1449, 99th Cong., 1st Sess., 131 Cong. Rec. H1100 (March 6, 1985); S.638, 99th Cong., 1st Sess., 131 Cong. Rec. S2727 (March 7, 1985).

[57] *See* Davis, Sherwood & Jones, *An Estimate of Labor Protection Cost in Selected Railway Consolidations*, 43 I.C.C. Prac. J. 56, 63 (1975).

that one cause of the Penn Central debacle was the cost of complying with the protective conditions assumed in order to secure the acquiescence of labor organizations to the merger between the Pennsylvania and the New York Central." [58] Within two years of that merger, Penn Central was in bankruptcy and Congress was forced to set up Conrail to avoid a total loss of rail service in part of the country. As a further response to that rail crisis, Congress enacted several major railroad statutes, principally the 4-R Act [59] and the Staggers Act,[60] intended to improve the railroads' ability to achieve and maintain adequate revenues. This Court should not allow an unwarranted expansion of financial liability under section 5(2)(f) that could undermine congressional efforts to assure the financial recovery of the railroads.

C. Deregulation And Competition In The Motor Carrier Industry

The motor carrier industry has undergone substantial deregulation since enactment of the Motor Carrier Act of 1980.[61] Testimony during recent oversight hearings indicates deregulation has had a significant positive effect on the trucking industry and that its overall financial condition is improving.[62] Relaxation of entry barriers and other reforms have resulted in a dramatically more

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[58] *In re Penn Central Transportation Co.*, 384 F. Supp. 895, 910 n.20 (Regional Rail Reorg. Ct. 1974).

[59] Railway Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (codified in sections of 45 U.S.C. (1982)).

[60] Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (codified in sections of 49 U.S.C. (1982)).

[61] Pub. L. No. 96-296, 94 Stat. 793 (1980) (codified in sections of 49 U.S.C. (1982)). *See generally Oversight of the Motor Carrier Act of 1980: Hearing Before the Senate Committee on Commerce, Science, & Transportation*, 98th Cong., 2d Sess. (1984) (hereinafter *"Senate Oversight Hearing"*) at 13 (statement of Commissioner Gradison).

[62] *Senate Oversight Hearing* at 10, 147 (statements of I.C.C. and D.O.T.).

competitive, efficient, and dynamic industry. Certainly a number of companies have been unable to compete effectively and have dropped out.[63] Indeed, as this case demonstrates, a number of such unsuccessful motor carriers have been railroad subsidiaries.[64] At the same time, however, entry of new carriers into the motor carrier industry since 1980 has been substantial. The number of trucking firms nearly doubled in the first three years of deregulation.[65] As a result, overall employment in the industry has increased to near-record levels.[66]

In this highly competitive environment, the companies that succeed are the ones that are efficient, creative and flexible in responding to shippers' needs, and able to implement new marketing strategies quickly.[67] However, in the case of any business decision that potentially affects a motor carrier's labor force, the decision below imposes costs on companies affiliated with railroads that non-rail affiliated companies will not incur. This arbitrary imposition of costs unfairly handicaps rail-affiliated motor carriers in competing on the merits with other trucking companies. Such a result is inconsistent with the goals of both trucking and railroad deregulation.

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[63] *See Senate Oversight Hearing* at 10, 75.

[64] *See* Appendix B.

[65] *See Senate Oversight Hearing* at 147; *see also* Johnson, *Going, Going, Gone!—The ICC's Regulation of Trucking Mergers*, 51 I.C.C. Prac. J. 391, 391-92 (1984).

This significant amount of new entry also supports the Commission's traditional justification for imposing minimal labor protection in motor carrier cases on the ground that new employers are more likely to appear in the motor carrier industry than in the railroad industry. *See* Petition for Writ of Certiorari at 13.

[66] *Senate Oversight Hearing* at 89-90, 95 (Exhibit 4).

[67] *Senate Oversight Hearing* at 73-74; *Oversight of the Motor Carrier Act of 1980: Hearings Before the House Subcommittee on Surface Transportation of the Committee on Public Works & Transportation*, 97th Cong., 1st Sess. 549-552 (1981) (statement of John Fowler, General Counsel (D.O.T.)).

CONCLUSION

Since its enactment, the critical disputes arising under section 5(2)(f) have been resolved only when this Court addressed the issues.[68] The Court has never addressed the scope of employees entitled to protection, however, and has not revisited the field of mandatory labor protection since the major transportation deregulatory statutes of recent years. AAR respectfully submits that this case is a timely and appropriate vehicle for the Court to resolve an important controversy concerning the scope of mandatory labor protection, and to prevent undesirable and needless disputes and turmoil between labor and management at a critical period for the surface transportation industry.

Respectfully submitted,

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[68] *See Norfolk & Western Railroad v. Nemitz*, 404 U.S. 37 (1971); *Brotherhood of Maintenance of Way Employees v. United States*, 366 U.S. 169 (1961); *Railway Labor Executives Association v. United States*, 339 U.S. 142 (1950); *ICC v. Railway Labor Executives Association*, 315 U.S. 373 (1942).

APPENDICES

APPENDIX A

MEMBERS OF THE ASSOCIATION OF AMERICAN RAILROADS

FULL MEMBER ROADS (U.S. LINES)

Akron, Canton & Youngstown Railroad Company

Alton & Southern Railway Company

Atchison, Topeka & Santa Fe Railway Company

Baltimore & Ohio Railroad Company

- Curtis Bay Railroad Company
- Staten Island Railroad Corporation

Baltimore & Ohio Chicago Terminal Railroad Company

Bangor & Aroostook Railroad Company

- Van Buren Bridge Railroad

Belt Railway Company of Chicago

Bessemer & Lake Erie Railroad Company

Birmingham Southern Railroad Company

Burlington Northern Railroad Company

[Canadian Pacific Limited—lines operated in U.S.]

- Canadian Pacific lines in Maine
- Canadian Pacific lines in Vermont

Chesapeake & Ohio Railway Company

- Covington & Cincinnati Elevator Railroad & Transfer & Bridge Company

Chicago & Illinois Midland Railway Company

Chicago & North Western Transportation Company

Chicago & Western Indiana Railroad Company

Chicago, Milwaukee, St. Paul & Pacific Railroad Company

Colorado & Southern Railway

Consolidated Rail Corporation

Denver & Rio Grande Western Railroad Company

Detroit & Mackinac Railway Company

Duluth, Missabe & Iron Range Railway Company

Elgin, Joliet & Eastern Railway Company

Fort Worth & Denver Railway

Galveston, Houston & Henderson Railroad Company

[Grand Trunk Corporation—and other lines in the U.S. indirectly controlled by the Canadian National Railways]:

- Grand Trunk Western Railroad Company
  - Detroit, Toledo & Ironton Railroad Company
- Central Vermont Railway, Inc.
- Duluth, Winnipeg & Pacific Railway Company
- [Canadian National Railways]:
  - Lines in Michigan
  - Lines in New England
  - Lines in New York
  - Lines in Vermont

Green Bay & Western Railroad Company

Houston Belt & Terminal Railway Company

Illinois Central Gulf Railroad Company

- Chicago & Illinois Western Railroad Company
- Waterloo Railroad

Kansas City Southern Railway Company

- Arkansas & Western Railway Company
- Fort Smith & Van Buren Railway Company
- Kansas & Missouri Railway & Terminal Railroad

Kentucky & Indiana Terminal Railroad

Lake Superior & Ishpeming Railroad Company

Lake Terminal Railroad Company

Louisiana & Arkansas Railway Company

McCloud River Railroad Company

McKeesport Connecting Railroad Company

Maine Central Railroad Company

Portland Terminal Company

Manufacturers Railway Company

Metro North Commuter Railroad Company

Missouri-Kansas-Texas Railroad Company including

Beaver, Meade & Englewood Railroad Company

Missouri Pacific Railroad Company

Brownsville & Matamoros Bridge Terminal Company

Chicago Heights Terminal Transfer Company

Doniphan, Kensett & Searcy Railway Company

Weatherford, Mineral Wells and Northwestern Railway Company

National Railroad Passenger Corporation (AMTRAK)

Newburgh & South Shore Railway Company

Norfolk & Western Railway Company

Chesapeake Western Railway Company

Lake Erie & Fort Wayne Railroad Company

Lorain & Western Virginia Railway Company

New Jersey, Indiana & Illinois Railroad Company

Norfolk, Franklin & Danville Railway Company

Peoria & Pekin Union Railroad Company

Pittsburg & Shawmut Railroad Company

Pittsburgh & Lake Erie Railroad Company

Montour Railroad Company

Youngstown & Southern Railway Company

Prescott & Northwestern Railroad Company

Richmond, Fredericksburg & Potomac Railroad Company

St. Louis Southwestern Railway Company

Seaboard System Railroad, Inc.

- Gainesville Midland Railroad Company

Soo Line Railroad Company

- Sault Ste. Bridge Company

Southern Pacific Transportation Company

- Holton Inter-Urban Railway Company
- Northwestern Pacific Railroad Company
- Petaluma & Santa Rosa Railroad Company
- Visalia Electric Railroad Company

Southern Railway System

- Alabama Great Southern Railroad Company
- Algers, Winslow & Western Railway Company
- Atlantic & East Carolina Railway Company
- Camp Lejeune Railway Company
- Carolina and Northwestern Railway Company
- Central of Georgia Railroad Company
- Cincinnati, New Orleans & Texas Pacific Railway Company
- Georgia Northern Railway Company
- Georgia Southern & Florida Railway Company
- Interstate Railroad Company
- Live Oak, Perry & South Georgia Railway Company
- Louisiana Southern Railway Company
- State University Railroad Company
- Tennessee, Alabama & Georgia Railway Company
- Tennessee Railway Company

Texas Mexican Railway Company

Union Pacific Railroad Company
Spokane International Railroad Company
Mt. Hood Railway Company
Union Railroad Company (Pittsburgh)
Vermont Railway, Inc.
Western Maryland Railway Company
Western Pacific Railroad Company
Sacramento Northern Railway Company
Tidewater Southern Railway Company
Western Railway of Alabama
Atlanta & West Point Rail Road Company
Winston-Salem Southbound Railway
High Point, Thomasville & Dentor Railroad

SPECIAL CANADIAN AND MEXICAN MEMBER ROADS

CANADIAN LINES (in Canada)
Algoma Central Railway
British Columbia Hydro & Power Authority
British Columbia Railway
Canadian National Railways
Canadian Pacific Limited
Ontario Northland Railway
Toronto, Hamilton & Buffalo Railway
White Pass & Yukon Corp. Ltd.
MEXICAN LINES (in Mexico)
Chihuahua Pacific Railway Company
[Direction General de Ferrocarriles en Operacion]:
Ferrocarril Sonora-Baja California, S.A. de C.V.
Ferrocarriles Unidos del Sureste, S.A. de C.V.
Ferrocarril del Pacifico, S.A. de C.V.
National Railways of Mexico

ASSOCIATE MEMBERS

Alaska Railroad

Aliquippa & Southern Railroad Company

American Refrigerator Transit Company

Apalachicola Northern Railroad Company

Belfast & Moosehead Lake Railroad Company

Boston & Maine Corporation
Springfield Terminal Railway

California Western Railroad

Centromen Puru Incorporated

Chestnut Ridge Railway

Chicago Short Line Railway Company

Chicago South Shore & South Bend Railroad

Chicago, West Pullman & Southern Railroad Company

Chilean State Railways (CHILE)

Cities Service Company Railroad

Cliffs Western Australian Mining Co. Pty Ltd
(AUSTRALIA)

Colorado & Wyoming Railway Company

Cuyahoga Valley Railway Company

Dardenelle & Russellville Railroad Company

Delaware & Hudson Railway Company
Greenwich & Johnsville Railway Company

Delray Connecting Railway Company

Devco Railway (Cape Breton Dev. Corp.—Coal Div.)
(CANADA)

Duluth & Northwestern Railroad Company

East Erie Commercial Railroad

East Jersey Railroad & Terminal Company

East St. Louis Junction Railroad Company
Empresa Minera Del Centro Del Peru Railways (PERU)
Essex Terminal Railway (CANADA)
Fepasa-Ferrovia Paulista (BRAZIL)
Fruit Growers Express Company
Genesee & Wyoming Railroad Company
Grafton & Upton Railroad Company
Graysonia, Nashville & Ashdown Railroad Company
Great Western Railway Company
Hamersley Iron Pty Ltd. (WESTERN AUSTRALIA)
Hartford & Slocomb Railroad Company
Hillsdale County Railway Company, Inc.
India, Gov't. of: Ministry of Railways (INDIA)
Japanese National Railways (JAPAN)
Korean National Railroad (KOREA)
LaSalle & Bureau County Railroad Company
Lenawee County Railroad Company, Inc.
Long Island Rail Road Company
Louisiana & North West Railroad Company
Manufacturers' Junction Railway Company
Maryland & Pennsylvania Railroad Company
Metro North Commuter Railroad Company
Michigan Northern Railway Company, Inc.
Middletown & Hummelstown Railroad Company
Minnesota, Dakota & Western Railway Company
Monongahela Connecting Railroad Company
New Orleans Public Belt Railroad

Northeast Illinois Railroad Corporation

Pacific Fruit Express Company

Pearl River Valley Railroad Company

Pickens Railroad-National Railway Utilization Corp.

Port Authority of New York & New Jersey (The)

Providence & Worcester Company

Public Transport Commission of New South Wales (AUSTRALIA)

Rede Ferroviaria Federal S.A. (BRAZIL)

River Terminal Railway Company

Roberval & Saguenay Railway Company (CANADA)

Roscoe, Snyder & Pacific Railway Company

San Diego & Arizona Eastern Transportation Company

Sierra Railroad Company

Somerset Railroad Corporation

South African Railways (REPUBLIC OF SOUTH AFRICA)

Southern Indiana Railway, Inc.

Spanish National Railways (RNFE) (SPAIN)

Taiwan Railway Administration (REPUBLIC OF CHINA)

Texas & Northern Railway Company

Upper Merion & Plymouth Railroad Company

Victoria A Minas Railway (BRAZIL)

Wabush Lake Railway Ltd. (CANADA)

Warwick Railway Company

Washington Terminal Company

Yancey Railroad Company

APPENDIX B

RAILROADS AND MOTOR CARRIER SUBSIDIARIES

I. Class I Railroad Companies With Current Ownership Interest In Motor Carriers [1]

Railroad	Motor Carrier	Number of Motor Carrier Employees [2]
Chesapeake & Ohio Ry.	Chessie Motor Express	149
Consolidated Rail Corp.	Pennsylvania Truck Lines	1,000
Florida East Coast Ry.	Florida Express Carrier	[3]
	Florida East Coast Highway Dispatch	185
Illinois Central Gulf	Gulf Transport Company	170
Seaboard System R.R.	Seacoast Transp. Co.	128
Chicago, Milw. St. P.	Milwaukee Motor Transport	260
Denver & Rio Grande Western R.R.	Rio Grande Motor Way	40
Kansas City Southern	Louisiana, Ark. & Tex. Transport Co.	46
	Landa Motor Lines	41
	KCS Transport	29
Missouri-Kansas-Texas	Katy Transp. Co.	71
Missouri Pacific R.R.	Missouri Pacific Truck Lines	450
Southern Pacific	Pacific Motor Trucking	1,641
	Pacific Motor Transport	23
	Louis Heller, Inc.	(presently inactive)
Union Pacific R.R.	Union Pacific Motor Freight	257
Western Pacific R.R.	WPX Freight System	185
	TOTAL	4,675

[1] Source: AAR survey of membership, and annual reports of Class I Railroads (Form R-1), through 1983.

[2] Employee counts taken from Standard & Poor's Register of Corporations (1985), and from AAR survey of members. These figures do not include owner-operators providing occasional service under contract.

[3] Not available.

II. Motor Carrier Subsidiaries Sold Or Terminated By Class I Railroad Companies Since January 1, 1980 [1]

Railroad	Motor Carrier	Number of Motor Carrier Employees [2]
Burlington Northern R.R.	BN Transport	708
	Federal Transport	39
	Frisco Transp. Co.	162
Atchison, Topeka & S.F.	Santa Fe Trails Transp.	558
Southern Ry. Co.	Southern Region Motor Transp.	37
	TOTAL	1,504

[1] Source: AAR survey of membership.

[2] Source: Standard & Poor's Register of Corporations (1985), and AAR survey of membership.

III. Pending Applications For Acquisitions Of Motor Carriers By Railroads

Railroad	Motor Carrier	Number of Motor Carrier Employees
Norfolk Southern	North American Van Lines	2,400
	TOTAL Motor Carrier Employees in Tables I, II and III	8,579